

#### **REMARKS**

In response to the Office Action dated September 23, 2008, Applicant has amended the application as above. No new matter is added by the amendments as discussed below. Applicant respectfully requests the entry of the amendments and reconsideration of the application in view of the amendments and the remarks set forth below.

#### **Discussion of Claim Amendments**

Claims 1-6 and 18-23 have been amended. Upon the entry of the amendments, Claims 1-27 are pending in this application. The amendments to Claims 1 and 18 are supported, for example, by original Claims 1 and 19, respectively. The amendments to Claim 23 are supported, for example, by Figures 2 and 5. The amendments to the remaining claims are merely to correct their dependencies, and do not narrow the scope of protection. As such, the amendments to the claims do not introduce any new matter. Entry of the amendments is respectfully requested.

#### **Discussion of Claim Rejections Under 35 U.S.C. § 102(e)**

The Examiner has rejected Claims 1, 11-13, 18, 23, and 26 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0203828 A1 ("Mirchandani"). Applicant respectfully submits that all pending claims are allowable over the prior art of record as discussed below.

#### **Rationale of 35 U.S.C. § 102**

"For a prior art reference to anticipate a claim under 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference." *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 USPQ 2d 1315, 1317 (Fed. Cir. 1988).

#### **Discussion of Patentability of Independent Claims 1, 11, 18, and 23**

Independent Claim 1 recites, among other things, "selecting a link from a plurality of links in the overloaded channel" and "transferring, at the access node, the selected link from the overloaded channel to a less loaded channel of the plurality of channels." Each of independent

Application No.: 10/808,174  
Filing Date: March 23, 2004

Claims 11, 18 and 23 includes similar features thereto. Applicant respectfully submits that Mirchandani does not teach the above-recited features of the claimed invention.

Referring to paragraph [0051], Mirchandani describes i) determining a need to re-assign an overloaded channel, ii) selecting an available channel from unused channels, iii) closing the overloaded channel and iv) re-assigning the available channel (for the closed channel). *See paragraphs [0050], [0054] and [0055], and Figure 5a.* However, Mirchandani does not teach “selecting a *link* from a plurality of *links* in the overloaded channel” as the prior art reference is directed to selecting and re-assigning an entire channel. Furthermore, since Mirchandani does not teach the feature associated with selecting a link, the Mirchandani reference cannot, and does not, teach “transferring, at the access node, *the selected link* from the overloaded channel to a less loaded channel of the plurality of channels.”

Since Mirchandani does not teach every element of each independent claim, Applicant respectfully submits that all independent claims are not anticipated by Mirchandani, and thus Claims 1, 11, 18 and 23 are allowable over the Mirchandani reference.

#### Discussion of Patentability of Dependent Claims

Claims 12-13 and 26 depend from base Claim 11, and further define additional technical features of the present invention. In view of the patentability of their base claim, and in further view of the additional technical features, Applicant respectfully submits that the dependent claims are patentable over the prior art. Furthermore, Applicant does not necessarily agree with the characterizations of the prior art made by the Examiner in rejecting the dependent claim.

#### Discussion of Claim Rejections Under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 2-10, 14-16, 17, 19-22, 24-25, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Mirchandani in view of U.S. Patent Application Publication No. 2003/0134642 A1 (“Kostic”). Applicant respectfully submits that all pending claims are allowable over the prior art of record as discussed below.

Standard of Prima facie Obviousness

The Patent and Trademark Office has the burden under section 103 to establish a *prima facie* case of obviousness. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-87 (Fed. Cir. 1984). To establish a *prima facie* case of obviousness, however, prior art (as opposed to prior art references) must teach or suggest all the claim limitations. "Examination Guidelines for Determining Obviousness Under 35 U.S.C. §103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*" Federal Register Vol. 72 No. 195 at 57528 (October 10, 2007). Further, the Patent Office must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. *Id.*

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). MPEP 2143.01.

Discussion of Patentability of Pending Claims

The rejected claims (2-8, 14-16, 19-22, 24-25 and 27) all depend from independent Claim 1, 9-11, 17-18 or 23. When each of independent Claims 1, 9-11, 17-18 and 23 is patentable over the combination of the cited references, all the dependent claims are patentable. Thus, Applicant now discusses the patentability of all independent claims.

As discussed above in connection with the § 102 rejections, Mirchandani does not teach the claimed features of "selecting a link from a plurality of links in the overloaded channel" and "transferring, at the access node, the selected link from the overloaded channel to a less loaded channel of the plurality of channels" (or similar features thereto) recited in independent Claims 1, 11, 18 and 23. Each of independent Claims 9-10 and 17 includes similar features thereto.

Kostic was cited merely to allegedly show certain features unrelated to the above-indicated features of the claimed invention, and this reference does not remedy the deficiency of Mirchandani. Therefore, the combination of the prior art references does not teach or suggest all of the features of each of independent Claims 1, 9-11, 17-18 and 23.

Furthermore, Applicant respectfully submits that there is no reason or motivation to combine Mirchandani and Kostic to arrive at the claimed invention. Kostic teaches an access

point may deny or terminate a communication with a mobile station after determining a relatively highly loaded access point should not accept new associations (paragraph 0017). Mirchandani, however, teaches monitoring each access point and determining if extra channel capacity is required to effect a desire communication with a communication unit, acquiring extra channel capacity, and then establishing communication with the communication unit at the given access point (paragraphs 0049, 0054, and 0056). In view of the contradicting concepts of the prior art references, Applicant respectfully submits that proposed modification would render the prior art invention (either Mirchandani or Kostic) being modified unsatisfactory for its intended purpose. *MPEP 2143.01.*

In view of the above, Applicant respectfully submits that no *prima facie* case of obviousness has been established with respect to all independent claims, and thus Claims 1, 9-11, 17-18 and 23 are allowable over the prior art of record.

Claims 2-8, 14-16, 19-22, 24-25 and 27 depend from one of base Claims 1, 9-11, 17-18 and 23, and further define additional technical features of the present invention. In view of the patentability of their base claims, and in further view of the additional technical features, Applicant respectfully submits that the dependent claims are patentable over the cited prior art. Furthermore, Applicant does not necessarily agree with the characterizations of the prior art made by the Examiner in rejecting the dependent claims.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Application No.: 10/808,174  
Filing Date: March 23, 2004

Conclusion

In view of Applicant's foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP



By: \_\_\_\_\_

John M. Carson  
Registration No. 34,303  
Attorney of Record  
Customer No.  
(619) 235-8550

AMEND

6237950  
111408